IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

Crl.Rev.Pet.No. 927 of 1999(C)

CRA.246/1997 of ADDL. SESSIONS COURT, THRISSUR
SC.124/1996 of PRL. ASSISTANT SESSIONS COURT, IRINJALAKUDA

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REVN. PETITIONER:

1. SREEJITH,
   S/O. KARANATH BALAKRISHNAN,
   KOTTAMKULAM DESOM,
   PERINNANAM VILLAGE.

2. SATHEESH BABU,
   S/O. PANADU BHARATHAN,
   KOTTAMKULAM DESOM,
   PERINNANAM VILLAGE.

3. BALJISH,
   S/O. VENKIDIYIL VELAPPAN,
   KOTTAMKULAM VILLAGE,
   PERINNANAM VILLAGE.

BY ADV. SRI.THOMAS ANTONY
SRI. K.M. JAMALUDHEEN
SRI. FELIX JOSE

RESPONDENTS:

THE STATE OF KERALA REP. BY
C.I OF POLICE,
MATHILAKAM POLICE STATION,
VALAPPAD, THRISSUR.

BY ADV. SRI. AMJAD ALI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P.NO. 4286/1999 IN CRL. R.P.NO. 927/1999

DISMISSED

23.05.2007 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

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CRL. R.P. NO. 927 OF 1999

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Dated this the 23rd day of May 2007

O R D E R

The revision petitioners, three in number, stand convicted for the offences under Sections 341, 324 and 326 r/w Section 34 of the Indian Penal Code and sentenced, as modified by the appellate court, as follows:

> A1 has to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- for the offence under Section 326 IPC and in default to undergo rigorous imprisonment for six months and to undergo rigorous imprisonment for one year for the offence under Section 324 IPC and to undergo simple imprisonment for one month for the offence under Section 341 IPC. The 2nd and third accused had to undergo rigorous imprisonment for 18 months each and to pay a fine of Rs.5,000/- each and in default of payment of fine rigorous imprisonment for six months each for the offences under Sections 326 and 324 IPC and to undergo simple imprisonment for one month each for the offence under Section 341 IPC. Out of the fine amount Rs.3,000/- is to be paid to PW2.

2. The prosecution case is that on 14.11.1994 at about 6.45 p.m. the accused attacked PW2 who was returning home and hit him with an iron rod and wooden reaper and the PW2 has sustained injury on the occipital region and fracture on the shaft of right tibia and

fibula. The evidence adduced in the matter consisted of the testimony of PWs 1 to 8 of whom PW2 is the injured and PWs 3 and 5 are the eye witnesses, Exts. P1 to P5 and MOs 1 to 4 that included iron rod as well as blood stained dhoti worn by PW2.

3. The direct evidence consisted of the testimony of PW2, the injured and that of PWs 3 to 5 who on hearing the cries of PW2 reached the spot and witnessed the accused beating PW2 with the iron rod and the wooden reaper on the head and legs. PW2 was immediately removed to the hospital and the FIR was also recorded without delay. Although the charge sheet was issued also for the offence under Section 307 IPC, the trial court acquitted the accused for the offence under Section 307 IPC.

4. The main contention raised by the counsel for the revision petitioners is that the evidence of PWs 2, 3 and 5 are silent with respect to the identity of the accused and hence the accused is entitled for acquittal. Evidently, the above contention has not been raised even in the trial court or in the appellate court. Being a question of fact the accused ought to have raised the above contention before the courts below. It is in evidence that the accused and the victim are the persons of locality and are known to each other. The evidence of PWs

2,3 and 5 mentions the accused by their number in the accused's array while the accused were standing in the dock and the witnesses mentioned that the particular accused beat them. I find that the absence to mention pointing out that it was the particular accused who was standing in the dock who beat PW2 is only an omission or lapse on the part of the prosecutor. It is also to be noted that nowhere the accused was disputed the identity except when the investigating officer was questioned. In the circumstances and taking the evidence as a whole, I find that the contention raised for the first time in the revision cannot be treated as a ground to set aside the orders of the courts below. I find that the direct evidence in the matter by the injured as well as the two occurrence witnesses stand not discredited on material particulars. PW1, the doctor has testified as to the injuries sustained and as to the alleged cause and the time of occurrence. The fracture on the mid shaft of right tibia and fracture of neck of the right fibula are mentioned in Ext.P1 certificate proved by PW1, the doctor. PW2 was inpatient up to 24.11.1994. PW2 has also identified MOs 3 and 4, the weapons used.

5. It is the contention of the revision petitioner that MO4,iron rod is not a dangerous weapon. MO4 as can be seen from Ext.P4 is an

iron rod having length of 66 cms. and girth of 5 cms and MO3, reaper is having a length of 84 cms. I find that the contention, that the iron rod of the above size is not a dangerous weapon, cannot be sustained.

6. It is also pointed out that PW2 is an anti-social element who is involved in a number of cases. No objective evidence as such has been produced to sustain the above contention. I find that PW2 has admitted that he was an accused in the two criminal cases that were pending. All the same, I find that the above contention cannot be taken as a ground to render infirm the version of eye witnesses. So far as the offence committed by the accused is concerned, I find that the evidence adduced in the matter clearly established beyond reasonable doubt that it is the accused who committed offence and that the offences under Sections 324, 326 and 341 r/w Section 34 of IPC are attracted. The conviction is confirmed.

7. So far as the sentence is concerned, the counsel for the revision petitioner has sought for leniency pointing out that at the time of the incident the accused were aged i.e. A1-20 years, A2-20 years and A3-19 years and that there was no antecedents. The incident had taken place in the year 1994, that is, more than a decade ago. In the circumstances, I find that the sentence is liable to be modified. The

sentence is modified and the accused are sentenced to imprisonment already undergone and to pay a fine of Rs.35,000/- each and in default to undergo simple imprisonment for six months each for the offence under Section 326 IPC. The amount of fine, if realised, shall be paid to PW2. No separate sentence is awarded for the offences under Section 324 and 341 of IPC. The revision petitioners are granted one month time from today onwards to remit the fine amount.

The Crl.R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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